



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1998

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78711-2548

OR98-3071

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120268.

The City of Corpus Christi (the city) received a request for the Arthur Andersen proposals, the proposal evaluation criteria, evaluation scores and materials, and the resulting contracts associated with Requests for Proposal (RFP) BI-0033-98 and BI-0034-98. You explain that some information within the requested Arthur Andersen proposals may be proprietary in nature and protected from disclosure by the Government Code. Gov't Code § 552.007; Gov't Code § 552.305. You raise no exception to disclosure on behalf of the city, and make no arguments regarding the proprietary nature of the requested information. You have submitted for our review the portions of the proposals which you assert may be protected from disclosure, pages 9-11 and 210-219 of RFP BI-0033-98, and pages 9-11 and 179-188 of RFP BI-0034-98. Because you raise no exception to disclosure for the other requested information, we presume that any responsive evaluation criteria, scores, or contracts have been released. Gov't Code § 552.301.

Since the property and privacy rights of third parties may be implicated by the release of the requested information, this office notified Arthur Andersen about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open

Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Arthur Andersen responded and argues that portions of its proposal are protected by sections 552.101, 552.104, 552.110, and 552.127 of the Government Code. Arthur Andersen argues that all of the information submitted by the city is protected. Arthur Andersen additionally argues that page 178 of the RFP BI-0034-98 is excepted from disclosure. The city, however, did not submit this page as a responsive document for which it seeks a decision. Gov't Code § 552.301; Gov't Code § 552.305 (governmental body may seek attorney general decision when third party privacy or property interests may be involved). This ruling, therefore, does not address the propriety of the release of this page. Gov't Code § 552.301.


Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption four to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. In *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption four to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 at 4 (1996). To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.*

Arthur Andersen contends that the submitted information reflects its "tools, processes, methodologies, and procedures used to implement" Enterprise Resource Planning software. Arthur Andersen advances several arguments as to why release of this implementation information would cause it substantial competitive harm. After examining the submitted materials and Arthur Andersen's arguments, we conclude that the company has established that the submitted information is confidential commercial information. The city must withhold pages 9-11 and 210-219 of RFP BI-0033-98, and pages 9-11 and 179-188 of RFP BI-0034-98 under section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive style with a large, stylized "D" and "B".

Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 120268

Enclosures: Submitted documents

cc: Ms. Leah Clark
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(w/o enclosures)